

# REPORT to the KITTELY TOWN COUNCIL

1 RESPONSIBLE INDIVIDUAL: Beers

Date: June 17, 2011

2  
3 Subject: Property Maintenance Formatting Conversion Error Correction

4  
5 **Background:**

- 6 • Making changes to the last (ordained 06/13/11) version of Title 8, Chapter 3, using automated  
7 "Track Changes" allowed errors to occur in four references wherein an extra leading "8." did not  
8 get stricken out and they read Section 8.8.2..., vs 8.2... :

9  
10 **"8.2.5 Maintenance of Grounds Following Casualty Damage.**

11 *Within the period of ninety (90) days following the occurrence of a casualty as defined in Section 8.2.2 that*  
12 *results in the violation of Section 8.8.2.4, the owner shall cause the removal of all debris or other violation*  
13 *connected therewith so as to be compliant with Section 8.8.2.4. The CEO may grant an extension as*  
14 *provided in Section 8.8.2.10.*

15  
16 **8.2.9 Procedure for Service of a Notice of Violation and Order of Correction.**

17 *The Notice of Violation and Order of Correction ("the Notice") pursuant to Section 8.8.2.8, must either:"*  
18

19 **Current Situation:**

- 20  
21 • Normal legislative practice dealing with unintentional typographical corrigendum is to note  
22 them with insertion of an errata page  
23  
24 • It would be in order to approve correction, in this instance, by Council approval prior to the  
25 ordinance being published and taking effect  
26

27 **Recommendation:** Approval to correct

**Title 8     HEALTH and SAFETY**

**Chapter 8.1   SOLID WASTE COLLECTION and DISPOSAL**

**Article I. General**

**8.1.1     General.**

**8.1.1.1     Purpose.**

The Town recognizes that the adequate disposal of solid waste presents a problem to the municipality and that the Town has an obligation to provide a solid waste disposal facility for certain types of domestic and commercial waste generated within the Town. The purpose of this Chapter is to promote and protect the public health, safety and general welfare of the citizens of the Town by gaining management control over solid waste, enabling the reclamation of natural resources, including energy from solid waste, providing for a comprehensive, rational and effective means of controlling and regulating the collection, transportation and disposal of acceptable waste generated within the Town, and insuring the delivery of a steady supply of acceptable waste to the disposal facility designated herein.

**8.1.1.2     Statutory Compliance.**

Pursuant to this purpose, the Town will maintain compliance with all the laws of the State of Maine relating to the management of solid waste including "Maine Hazardous Waste, Septage and Solid Waste Management Act," SubChapters I and IA (38 M.R.S. §1301 *et seq.*); 38 M.R.S. §417 and 420; the Waste Discharge Law (38 M.R.S. §413); 38 M.R.S. §590-E; the Maine Refuse Disposal District Enabling Act (38 M.R.S. §1701 *et seq.*); and the Solid Waste Management and Recycling Law (38 M.R.S. §2101 *et seq.*).

**8.1.1.3     Disposal Facility Designation.**

In accordance with the provisions of 38 M.R.S. §1304-B, the Town designated disposal facility for compliance and purpose cited above is identified as Turnkey Landfill, Rochester, New Hampshire, operated by Waste Management Incorporated as manifested in a duly executed contract with the Town.

**Article II. Definitions**

**8.1.2     Definitions.**

Solid waste words or terms not specifically defined in this section have the meanings ascribed to them in Chapter 400, Section 1 of the State of Maine Solid Waste Management Regulations as adopted and amended by the Board of Environmental Protection or in the absence thereof those meanings commonly accepted for the terms being used.

For purposes of this Chapter and for rules and regulations adopted by the Town Council the following terms have the following meanings unless the context indicates otherwise:

**Acceptable waste** means all those types defined in this section, including all ordinary household, municipal, institutional, commercial and industrial wastes with the exception of unacceptable materials as defined in this section.

**Agency** means the Maine Waste Management Agency.

**Board** means the Board of Environmental Protection.

**Bulky material** means an item occupying a space of one cubic yard or more and includes, but is not limited to, motor vehicles or portions thereof, trailers, floats, boats, tanks of two hundred (200) gallons or more, building sections, commercial equipment, camper tops, etc.

**Collection facility** means the building or area designated by the Council in which acceptable waste is deposited and temporarily stored for trans-shipment for disposal.

**Commercial hauler** means any person engaged in handling and hauling solid waste, with or without direct compensation, or as a tenant service provided by an owner or facility management, to five or more residents or businesses.

**Compost material** means leaves, grass clippings, herbaceous plants, separated food waste, and sawdust.

**Department** means the Maine Department of Environmental Protection.

**Disposal** means the discharge, deposit, dumping or placing of any solid waste into or on any land.

**Disposal facility** means the location as operated by the agency identified in a contract between the Town and a selected provider.

**Ferrous metals** means any iron-containing commodity categorized as #1 and #2 steel, cast iron, and light iron/white goods.

**Freebie** means any item, clean and in good repair, that may be accepted at the "Freebie Barn" for disposal by no cost transfer to any interested resident.

**Garbage** means all putrescible animal and vegetable wastes resulting from handling, preparation, cooking and consumption of food.

**Good Neighbor** means a person with a valid solid waste facility decal who may transport acceptable waste to the solid waste facility for their own disposal and from no more than three other locations within Town.

**Handle** means to store, transfer, collect, separate, salvage, process, reduce, recover, incinerate, treat or dispose.

**Hazardous waste** means a waste substance or material, in any physical state, designated as hazardous by the Board under 38 M.R.S. §1319-O, and contained in Section 3 of DEP 06-96, Chapter 850. It does not include waste resulting from normal household or agricultural activities. The fact that a hazardous waste or a part or a constituent may have value or other use or may be sold or exchanged does not exclude it from this definition. Such waste is that with inherent properties that make it dangerous to manage by ordinary means, including but not limited to, chemicals, explosives, pathological wastes, radioactive wastes, toxic wastes and other wastes defined as hazardous by 38 M.R.S. §1301 et seq., the state of Maine or the Resource Conservation and Recovery Act of 1976, as amended, or other federal, state or local laws, regulations, orders or other actions promulgated or taken with respect thereto.

**Household hazardous waste** means any hazardous waste material excluded from identification as a hazardous waste by Maine Solid Waste Management Rules Chapter 850, section 3.A(4)(vii) including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse-derived fuel) or reused because it is generated by households.

**Household waste** means any waste material including rubbish, garbage, and trash derived from households (including single and multiple residences, hotels and motels, bunkhouses, picnic grounds, and day-use recreation areas.)

**Landfill wastes** means that portion of the waste stream that is not presently recovered and includes, but is not limited to, plaster, insulation, plastic items, vinyl siding, furniture, toys, porcelain plumbing fixtures, lobster traps, fish nets, linoleum, rugs, rubber hose, vines, thorn bushes, etc.

**Mandatory recycling** means the requirement that person(s) must separate recyclables from their trash as defined in this section.

**Manufactured wood wastes** are man-made wood products that were milled or composted from a wood base and are normally manufactured objects, demolition or construction waste.

**Natural wood wastes** means logs, limbs, brush, bark and woodchips.

**Nonferrous metal** means any metals devoid of iron content and generally categorized as copper, brass, aluminum or lead.

**Public place** means any and all streets, sidewalks, boulevards, alleys or other public ways, and any and all public parks, beaches, squares, spaces, grounds and buildings.

**Recoverable wastes** means the recovery of, or potential for future recovery of, materials or substances that have useful physical or chemical properties and can be reclaimed for reuse or recycled for the same or other purposes and includes, and is limited to, landfill wastes, compost materials, lead acid batteries, ferrous metals, nonferrous metals, tires, waste oil, manufactured wood wastes and natural wood waste, and inert fill.

**Recovery facility** means those areas of the solid waste facility apportioned to spaces used for the separation and temporary storage of resource recovery, reuse, and landfill disposal materials.

**Recyclables** means manufactured materials or residues that may be reused or reprocessed into similar or different use.

**Recycling** means the separating, collecting and/or reprocessing of manufactured materials or residues for reuse either in the same form or as part of a different product.

**Resource recovery** means the recovery of materials or substances that still have useful physical or chemical properties after serving a specific purpose and can be reused or recycled for the same or other purposes.

**Reuse materials** means items with potential life cycle remaining, including those that may require minor repair, cleaning etc., that facility attendants may allow to be set aside in a designated reuse set-aside section, with appropriate fee paid to the resource recovery facility, for removal and possession by any interested resident.

**Rubbish** means domestic or commercial solid wastes other than trash as defined in this section that is normally not generated on a day-to-day basis and may be in a mixed condition prior to recovery or handling and includes, and is limited to, landfill wastes, compost materials, lead acid batteries, ferrous metals, nonferrous metals, tires, waste oil, manufactured wood wastes and natural wood wastes.

**Maine Solid Waste Management Rules** means Chapters 400 through 419 inclusive that have been adopted by the Board of Environmental Protection and are in effect pursuant to the requirements of the Maine Administrative Procedure Act, 5 M.R.S. §8051 *et seq.*

**Solid waste facility** means the coordinated facility designed to handle acceptable solid waste with segregated sub-facilities for the transfer, recycling, resource recovery, or landfill of materials as appropriate, located on MacKenzie Lane.

**Solid wastes** means any acceptable discarded or unwanted solid organic or inorganic material with insufficient liquid content (excepting waste oil) to be free flowing and consists of garbage, trash, – rubbish; Freebie, recyclable, reuse, or recoverable materials; and landfill or universal waste, but does not include unacceptable wastes as defined in this section.

**Special waste** means any solid waste generated by sources other than household and typical commercial establishments that exists in such an unusual quantity or in such a chemical or physical state, or any combination thereof, that may disrupt or impair effective waste management or threaten the public health, human safety or the environment and requires special handling, transportation and disposal procedures. Special waste includes, but is not limited to:

1. Ash;
2. Industrial and industrial process waste;
3. Sludge and dewatered septage;
4. Debris from nonhazardous chemical spills and cleanup of those spills;
5. Contaminated soils and dredge materials;
6. Asbestos and asbestos-containing waste;
7. Sand blast grit and non-liquid paint waste;
8. High and low pH waste;
9. Spent filter media residue; and
10. Shredder residue.

**Trash** means that portion of domestic and commercial solid waste that is generated on a day-to-day basis and includes, but is not limited to, garbage; paper products, bags, magazines, cartons, newspaper, cardboard; cloth; ceramics, dishes, cups, ovenware; glass, bottles, light bulbs, window panes; aluminum cans, foils; pans; tin cans; plastic items, containers, jugs; and other similar materials.

**Unacceptable materials** are, by their physical or chemical properties, any solid, semi-solid, liquid or gaseous organic or inorganic material that exist in a toxic, hazardous or physical state that may create a danger or nuisance to the public health, safety and welfare and/or cannot be properly disposed of, handled or processed at the solid waste facility and include, but are not limited to:

1. Special waste, bulky materials, or wet waste, as defined in this section ;
2. Hazardous waste (excepting waste oil, and lead-acid batteries);
3. Stumps or logs greater than twelve (12) inches in diameter;
4. Dead animals or portions thereof or other pathological wastes;
5. Demolition or construction debris from building and roadway projects or locations;
6. Liquid wastes or sludge;
7. Abandoned or junk vehicles;
8. Water treatment residues;
9. Tannery sludge;
10. Recyclables and/or recoverable wastes mixed in with solid waste; and
11. Any waste as deemed unacceptable by a facility attendant under the terms of an Agreement for Waste Disposal between the Town and its contracted service provider.

**Universal waste** means any waste listed in section 3.A(13)(b) of Chapter 850, the Maine Hazardous Waste Management Rules, including but not limited to cathode ray tubes; mercury-containing lamps; mercury-containing thermostats; and totally enclosed, non-leaking polychlorinated biphenyl (PCB) ballasts.

**Waste** means any of the categories of material to be disposed of as defined in this section.

**Waste oil** means a petroleum or synthetic-based oil which, through use or handling, has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

**Wet waste** means water or snow that has percolated through and mixed with trash causing a waste leachate that adds weight to the trash and can contaminate the solid waste facility equipment and grounds.

### **Article III. Requirements**

#### **8.1.3.1 General Depositing Regulations.**

##### **8.1.3.1.1 Deposited Waste Origin Requirement.**

No solid waste may be deposited at the solid waste facility, except that which is generated within the Town, or from any military installation, community or person(s) holding a contractual agreement with the Town.

##### **8.1.3.1.2 Transportation.**

All vehicles transporting any waste to be deposited at the solid waste facility must be duly identified as hereinafter provided. No person, while transporting waste or unacceptable materials along the streets or highways of Town, may permit or allow any portion of said material to be deposited on such street or highway. All loads are to be covered, secured or fastened to the conveying vehicle to prevent any material from falling or blowing off while in transit.

##### **8.1.3.1.3 Time of Deposit.**

Deposit of waste will be allowed only during the hours posted at the entrance to the solid waste facility. Depositing hours are as set from time to time by the Town Council to accommodate the needs of the Town. The solid waste facility will be closed on all holidays officially observed by the government of the Town.

##### **8.1.3.1.4 Place of Deposit.**

All deposits of waste at the solid waste facility are to be in areas designated by signs or as directed facility duty attendant.

**8.1.3.1.5 Authority of Attendants.**

A sufficient number of solid waste facility staff is to be appointed constables for the purpose of enforcing these rules and regulations. At all times one of on-duty staff must be one of the constables so appointed.

**8.1.3.1.6 Removal of Items from the Solid Waste Facility.**

No picking of the trash or rubbish within the solid waste facility is allowed. No one may remove any item from the property except from the Freebie Barn, or from the reuse set-aside section as authorized by an attendant, or by authorized haulers having a contractual agreement with the Town to remove or purchase certain recoverable materials.

**8.1.3.1.7 Trespassing.**

Use of, or presence within, the solid waste facility during other than posted hours without authorization is considered trespassing.

**8.1.3.1.8 Unacceptable Materials.**

Unacceptable materials as defined in this Chapter may not be disposed of at the solid waste facility.

**8.1.3.2 Specific Rules and Regulations.**

**8.1.3.2.1 Resource Recovery.**

The Town Manager may promulgate and revise as change in conditions warrant, specific rules and regulations known as the "Resource Recovery Facility Rules and Regulations" to govern the mandatory separation of recovered materials and/or landfilled wastes implementing this ordinance. Disposal of such waste is to be accompanied by a user fee contained in a schedule established by the Town Council, as may be revised from time to time (See Appendix A).

**8.1.3.2.2 Recycling.**

The Town Manager may adopt specific rules and regulations known as the "General Municipal Solid Waste and Recycling Rules and Regulations" to govern mandatory recycling and handling of municipal solid waste implementing this ordinance. Disposal of such waste is to be accompanied by a user fee contained in a schedule established by the Town Council, as may be revised from time to time (See Appendix A)

**Article IV. Deposit Permit**

**8.1.4.1 Kittery Permit Decal.**

**8.1.4.1.1 Required.**

No person(s) may deposit any waste at the solid waste facility without first obtaining a permit as evidenced by a current decal properly affixed to a motor vehicle.



**8.1.4.1.2 Application.**

An application for a decal to the Town Clerk requires the name and Kittery address of the applicant, proof of residency or property ownership, the registration number of the vehicle upon which it will be used, and the signature of the applicant certifying that person has received a copy of, and will abide by the Specific Rules and Regulations for the resource recovery of rubbish, recycling of trash, and reduction of wet wastes.

**8.1.4.1.3 Information to Appear on Decal.**

Each decal is to bear the words "Kittery Solid Waste Facility" and the date of expiration.

**8.1.4.1.4 Location of Decals.**

Decals are to be affixed no higher than four inches from the bottom line of the driver's side of the windshield or door window.

**8.1.4.1.5 Decal Issuance and Renewals.**

Kittery decals are issued on a bi-annual basis to coincide with even-numbered years and may be renewed in November or December of the odd-numbered year prior to expiration with a one-month grace period allowed in January of the even-numbered year of renewal.

**8.1.4.1.6 Records.**

The original of the decal application, decal serial number, and signature of the applicant and the issuing Town employee are to be kept on record for two years.

**8.1.4.1.7 Replacement.**

A new decal must be obtained whenever one in use becomes defaced, lost, or whenever the user's motor vehicle registration number is changed. A fee as set out in Appendix A will be charged for a duplicate for the same motor vehicle registration, except there will be no charge when the applicant submits sufficient remnants of the old decal, or proof that the loss was not due to the applicant's negligence.

**8.1.4.1.8 Fraud.**

Any decal found to have been obtained by fraudulent means will be revoked, the motor vehicle registration plate number posted at the solid waste facility, and the person penalized as provided by Article VII of this Chapter.

**8.1.4.1.9 Misuse of Permit Decal.**

Any person found to be delivering to the solid waste facility any waste that originates outside the Town or violating any other provisions of this Chapter is subject to the penalties of Article VII of this Chapter .

**8.1.4.2 Temporary Passes.**

**8.1.4.2.1 Required.**

No person without a valid permit decal, engaged or employed to provide disposal service for a resident, business, or nonresident property owner's waste originated within the town, except as a "good neighbor", may deposit any waste at the solid waste facility without first obtaining a temporary pass.

**8.1.4.2.2 Application.**

An application for a temporary pass must show the name and address of the resident, business, or nonresident property owner for whom the work is being done; the name, address and telephone number of the hauler; the vehicle registration number; the type of material to be carried; the date(s) when the material is to be moved; satisfactory verification by the Kittery person(s) that the hauler is in fact authorized to perform the work contemplated; and the signatures of applicant and Town employee issuing said pass.

**8.1.4.2.3 Information to Appear on Temporary Pass.**

Temporary passes are to be a duplicate of the approved application bearing a serial number and wording to indicate that mandatory recycling and separation is required.

**8.1.4.2.4 Temporary Pass Usage.**

A temporary pass must be presented to the attendant at the solid waste facility prior to and each time that disposal has been approved. On completion of the work the pass is to be given to the attendant. The expiration date of a temporary pass may not be later than fourteen (14) days from the date of issue, except that a person(s) engaged or employed by a resident, business, or nonresident property owner may be given a pass for the longer period of time at the discretion of and with the approval of the Town Manager.

**8.1.4.2.5 Records.**

The original application for passes is to be kept on file at for one year.

**8.1.4.2.6 Fraud - Any Temporary Pass.**

Any person(s) found to be delivering to the solid waste facility any waste that originates outside the Town or in violation of any other provisions of this Chapter is subject to the penalties of Article VII of this Chapter.

**Article V. Commercial Disposal Service**

**8.1.5.1 Commercial Haulers.**

**8.1.5.1.1 License.**

A. Application. Application for a commercial tipping license requires the name and business address of the hauler, the registration numbers of each vehicle to be used, a list of the business establishments to be serviced, the type of waste to be carried, street address and the number of housing units of multifamily dwellings, if any, to be served.

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B. In addition, nonresident haulers doing business in other Towns must furnish a list of all said hauler's Kittery customers and an estimate of the quantity of waste to be delivered weekly to the solid waste facility.

C. Any additions to the list, or elimination of customers, or any change in the volume of waste exceeding ten (10) percent is to be reported in writing to the Town Manager within fourteen (14) days of said change.

D. The license must contain the name and business address of the hauler, and the registration number(s) of the vehicle(s) to be used. The license is to be stamped with the Town seal and contain a warning that said license may be revoked for any violation of this Chapter.

### **8.1.5.1.2 License Classes.**

A. Any size, any materials, tipping outside, and with no cost to, the Town,

B. Household waste and recyclables, Large, tipping at the collection facility.  
For haulers providing service to more than 25 residents or businesses.

C. Household waste and recyclables, Small, tipping at the collection facility.  
For haulers providing all disposal services to 25 or fewer residents or businesses.

D. Landfill, reuse, and recoverable materials.  
For haulers providing all disposal services to residents or businesses, delivering to the recovery facility, and paying user fees.

E. Solid waste facility combination, Large  
For haulers providing service to more than 25 residents or businesses.

F. Solid waste facility combination, Small  
For haulers providing service to 25 or fewer residents or businesses.

G. Business-generated bulk salable paper goods.  
For baling facility direct drop, any size.

### **8.1.5.1.3 Fees.**

The license fee schedule for commercial haulers is as set out in Appendix A.

### **8.1.5.1.4 Term of Issue.**

Licenses must be renewed annually by January 31st.

**8.1.5.1.5 Load Rejections.**

Load(s) of solid waste containing any unacceptable materials as defined in this Chapter may be rejected by the attendant on duty. Further use of the facility may require that the commercial hauler present an acceptable plan making provisions for correcting any infractions.

**8.1.5.1.6 Suspension of License.**

Commercial haulers found to be delivering waste originating outside of the Town in violation of Section 8.1.5.1.1, or violating any other provision of this Chapter, will have their licenses suspended for one year.

**Article VI. Regulated Activity**

**8.1.6.1 Scope.**

This section regulates the accumulation, collection, transportation and disposal of acceptable waste as defined herein generated within the Town but excludes all waste of any nature generated by the Portsmouth Naval Shipyard. No waste generated outside the Town may be accepted at the solid waste facility nor transported to the disposal facility as Kittery-generated waste unless specifically authorized by the Town.

**8.1.6.2 Authorized Solid Waste Facility Users.**

The availability and use of the solid waste facility is limited to residents and property owners of the Town with a valid decal (see Section 8.3.1 *et seq*); those residents of other municipalities who may by express agreement of the Town be authorized to use the solid waste facility pursuant to this Chapter; and, to licensed commercial haulers transferring disposal material collected within the Town.

**8.1.6.3 Non-commercial Haulage.**

All acceptable waste generated and collected within the Town by other than commercial haulers may be deposited at the solid waste facility for transfer, as arranged by the Town, to the disposal facility.

**8.1.6.4 Commercial Haulage.**

All commercial haulers, except those licensed as "any size, any materials, tipping outside, and with no cost to, the town", must deposit for disposal all hauler collected acceptable waste generated within the Town directly to the solid waste facility, unless directed otherwise by the Town. The Town will arrange transfer of all deposited materials to the designated disposal facility, or as otherwise arranged by the Town.

**8.1.6.5 Property rights.**

Any waste deposited within the solid waste facility becomes the property of the Town or disposal facility contractor pursuant to the terms of the agreement referred to herein. No one may salvage, remove or carry off any such deposited solid waste without prior approval (See Section 8.1.3.1.6) of the Town.

**Article VII. Violation - Penalty.**

**8.1.7.1 Violations.**

Violations of this Chapter, or of the specific rules and regulations, are punishable by:

- A. First offense, Town Manager issues a written notice of violation;
- B. Second offense, a one-hundred-dollar (\$100.00) fine is imposed;
- C. Third offense, permit, pass, or license, is suspended from future use of the solid waste facility until restored by action of the Town Council.

**8.1.7.2 Separate Offenses.**

Each day such violation is continued or permitted to continue constitutes a separate offense and is punishable as such hereunder.

**8.1.7.3 Other Remedies.**

In addition to all remedies provided by law for violation of this Chapter, the Town may institute appropriate equitable proceedings including injunctive relief for the abatement of any violation of

**Chapter 8.2 PROPERTY MAINTENANCE**

**8.2.1 Purpose.**

The purpose of this Ordinance is to recognize the right of individual property owners and occupants within the Town to regulate and maintain their respective property grounds while at the same time setting minimum standards for the maintenance of such grounds to ensure that the condition of the grounds:

1. is not offensive to the comfort and enjoyment of owners and occupants of abutting properties in the neighborhood;
2. is not injurious to the public health, safety and welfare;
3. promotes the preservation of property values of abutting properties; and
4. does not pose potential risks to the environment including ground and subsurface water quality, and prevents nuisance conditions from being maintained on the grounds of such properties.

**8.2.2 Definitions.**

Except as specifically defined herein, the words and phrases used in this Chapter carry their customary and usual dictionary meanings unless otherwise clearly indicated by the context.

**Abutting property(ies)**, as used herein solely, means any property with a portion of it falling within one hundred fifty (150) feet of all the boundaries of a property in violation of this ordinance.

**Casualty** means any unforeseeable, unintended accident or event adversely affecting a property such as fire damage or various events commonly referred to as "Acts of God" or "Acts of Nature"

**Garbage** means, as defined in Section 8.1.2, the animal, vegetable and any other waste resulting from the handling, preparation, cooking or consumption of food.

**Grounds** means the part of a property not covered by permanent structures.

**Individual** means persons as defined in Title 1, Section 1.2.2.2 to be an individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, firm or, in the case of a corporation or association, any official thereof, or other legal entity..

**Junk** includes dilapidated, discarded, junked, or worn out material(s) or objects such as discarded, worn-out or junked plumbing heating supplies, electronic or industrial equipment, household appliances or furniture; discarded, scrap and junked lumber; and old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste and all scrap iron, steel and other scrap ferrous or nonferrous material.

**Litter** means all waste materials including, but not limited to, bottles, glass, crockery, cans, scrap metal, junk, paper, garbage, rubbish, offal, except waste parts or remains resulting from the normal field dressing of lawfully harvested wild game or the lawful use of waste parts or remains of wild game as bait, feathers, except feathers from live birds while being transported, abandoned ice-fishing shacks, old automobiles or parts of automobiles or similar refuse, or disposable packages or containers thrown or deposited as prohibited in this chapter, but not including the wastes of the primary processes of mining, logging, sawmilling, farming or manufacturing.

**Nuisance**, as defined in Title 1, Section 1.2.2.2, includes those public and common nuisances as defined by state statute 17 M.R.S., §2802 et seq.

**Occupant** as defined in Title 1, Section 1.2.2.2 means the words "tenant" or "occupant," applied to a building or land, mean and include any person holding a written or oral lease or who occupies the whole or a part of such buildings or land, either alone or with others is further defined for this Chapter to mean any person living, sleeping, or having some actual possession of a dwelling unit, rooming unit or place of business located on a property.

**Operator** is defined in other Titles for particular application. For the purposes of this Chapter it means any person who has charge, care or control of a dwelling or property, or a part thereof, whether with or without the knowledge and consent of the owner.

**Rubbish**, as defined in Section 8.1.2 is further defined for this Chapter to mean combustible and noncombustible waste materials, except garbage, including but not limited to, paper, rags, cartons, boxes, wood (excepting firewood), rubber, tires, leather, tree branches, yard trimmings (e.g. from

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flowers, weeds, shrubs, hedges, but excluding compost piles), tin cans, metals, mineral matter, glass, crockery and other similar materials.

**Structure**, for the purposes of this Chapter, structure is defined to mean anything built or constructed and permanently affixed on a property that cannot be considered grounds or landscaping.

### **8.2.3 Littering.**

A person may not throw, drop, deposit, discard, dump or otherwise dispose of litter or waste oil anywhere in the Town in any manner or amount as prohibited in 17 M.R.S., §2263-A, except in public receptacles, in private receptacles for collection, or at the solid waste facility at those times when it is open to receive litter.

### **8.2.4 Required Grounds Maintenance.**

A. Required. All property grounds or parts thereof must be maintained in a condition free of any nuisance, unsafe or unsanitary conditions or accumulation of garbage, household trash, rubbish, junk, litter, worn or discarded plumbing, heating supplies, oil or propane tanks, old or scrap copper, brass, rope, rags, batteries, paper trash, rubber, building debris, waste and all scrap iron, steel, other scrap ferrous or nonferrous material, debris, scrap lumber, tires, automobile parts, worn out or unused or inoperable machinery or parts thereof, glass, unused and/or inoperable appliances, worn and unused furniture, and more than two vehicles not bearing a valid motor vehicle inspection sticker and a valid motor vehicle registration.

B. Storage Allowed. Materials as listed in subsection A above, intended for private use of the property owner, occupant, or operator, may be stored on the grounds of the property as long as such material is screened from public ways and from abutting properties as provided in Section 8.2.4.C herein and the material is not otherwise in violation with any municipal ordinance or state statute. Private use does not include resale of the material.

C. Screening. Where screening is required for the storage of material on property grounds as provided in this Section, the following standards apply:

Screening may be accomplished by natural or man-made objects, plantings or fences, any of which must completely screen the stored material from view from any portion of any public way or abutting property throughout the entire calendar year. All screening must be located outside of the public way right-of-way limits.

1. Natural or man-made objects are interpreted to be:

a. Hills, gullies, or embankments. Such man-made objects must be constructed to blend with the landscape with loaming and seeding or other treatment as may be necessary to establish a natural appearance.

b. Buildings or other installations.

c. Combinations of above.

2. Plantings.

Trees, shrubs, or other vegetation of sufficient height, density and depth of planting or growth to completely screen the stored material may be used.

3. Fences.

Fences will be so located and of sufficient height to completely screen the stored material. All fences must be an opaque wall or barrier, constructed and erected in a workmanlike manner and well maintained. Only sound undamaged material, uniform in appearance, is acceptable.

D. Use Allowed. This Section may not be construed to prevent uses of property grounds allowed by the Land Use and Development Code (Title 16), Garage Sales (Chapter 5.4), or Sidewalk Sales (Chapter 5.7) sections of the Town Code; or any other state and/or municipal ordinance or statute, provided that all necessary permits or approvals when required are obtained and followed.

#### **8.2.5 Maintenance of Grounds Following Casualty Damage.**

Within the period of ninety (90) days following the occurrence of a casualty as defined in Section 8.2.2 that results in the violation of Section 8.2.4, the owner shall cause the removal of all debris or other violation connected therewith so as to be compliant with Section 8.2.4. The CEO may grant an extension as provided in Section 8.2.10.

#### **8.2.6 Responsibility for Maintaining Property Grounds.**

Owners, operators, tenants, and occupants of a property are jointly and severally liable for maintaining the property grounds free of any violation and are liable to take all corrective actions required to cure and prevent such violations.

#### **8.2.7 Enforcing Authority.**

This Chapter is enforced by the Code Enforcement Officer (CEO), designee, or the Police Department.

#### **8.2.8 Notice of Violation and Order of Correction.**

When a violation of this Ordinance exists, the CEO must notify violators by serving a Notice of Violation and Order of Correction ("the Notice") upon the violator(s). The Notice must be in writing, describe the nature of the violation, and direct the violator(s) to take the action necessary to correct the violation specifying the time period for correction as provided in Section 8.2.10. The Notice must also set forth the fine and/or penalty that could be imposed in the event that the violation exists as set out in the Notice and is not abated and corrected within the time period provided set out in the notice.

#### **8.2.9 Procedure for Service of a Notice of Violation and Order of Correction.**

The Notice of Violation and Order of Correction ("the Notice") pursuant to 8.2.8, must either:

1. Be served in hand to the violator(s) by the CEO or a person duly authorized by the CEO;



2. Be left at the violator(s)'s dwelling house or usual place of abode with a person of suitable age and discretion then residing therein or with an agent authorized by appointment or by law to receive service of process;
3. Be mailed by certified U.S. mail, return receipt requested, to the violator(s)'s last known address. If the return receipt is not returned, the Notice will be conclusively presumed to have been served and received three (3) days after it is mailed if it is also sent by regular U.S. mail, postage prepaid, which is not returned as undeliverable by the postal service. Such Notice sent by regular U.S. mail is conclusively deemed to be received by the addressee on the third (3rd) day following the date of mailing; or
4. Be served by any procedure for service of process authorized by Rule 4 of the Maine Rules of Civil Procedure (M.R.Civ. P.).

**8.2.10 Time Period for Corrective Action.**

The time period within which a violation must be corrected as set forth in the Notice of Violation and Order of Correction is thirty (30) days following receipt of the Notice of Violation and Order unless:

1. The CEO determines that a longer reasonable time limit is necessary considering the nature and extent of the work required to correct the violation and including any weather conditions during the winter months that may prevent or impede the correction of the violation within a 30-day period.
2. The CEO determines that a shorter reasonable time limit is appropriate due to the threat posed by said violation to the health, safety and welfare of the public.
3. The CEO finds that the violator(s) has been previously served a Notice of Violation and Order of Correction for a similar violation within the last two (2) years, in which case the time limit for corrective action must be no more than ten (10) days.

**8.2.11 Penalties for Violations.**

When a violation of any provision of this Chapter is found to exist and is not corrected within the time period set out in the Notice of Violation and Order of Correction, the Town Attorney and the CEO upon direction from the Town Manager are authorized to institute a Land Use Citation and Complaint pursuant to M.R.Civ.P. 80K or any other legal or equitable process that may be appropriate and necessary for the enforcement of the provisions of this Chapter, the same to be brought in the name of the Town.

Any person (including tenants in retail businesses) being the owner or tenant of or having control or use of any building or premises who is found to be in violation of any of the provisions of this Chapter is guilty of a civil violation. The violator is subject to the fines and other sanctions and remedies provided by 30-A M.R.S. §4452 currently including, without limitation, a penalty of \$100 to \$2,500 for a specific violation, injunctive relief, and attorney fees and costs.

## Chapter 8.3 EMERGENCY MANAGEMENT AGENCY

### 8.3.1 Short Title.

This chapter is known and may be cited and referenced as the "Civil Emergency Preparedness Ordinance of the Town of Kittery" as authorized under 37-B M.R.S. §781-834 as enacted by P.L. 1983, c.460.

### 8.3.2 Intent and Purpose.

It is the intent and purpose of this chapter to establish an agency that will ensure the complete and efficient utilization of all of the Town's resources in efforts to mitigate and respond to natural and man-made disasters. The Kittery emergency management agency is the coordinating agency for all activity in connection with civil emergency preparedness.

### 8.3.3 Definitions.

The following definitions apply in the interpretation of this chapter:

**Civil emergency preparedness** means the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to minimize and repair injury and damage resulting from disasters or catastrophes caused by enemy attacks, sabotage, riots, or other hostile action, or by fire, flood, earthquake or other natural or man-made causes. These functions include, without limitation, fire fighting, police, medical and health, emergency welfare, rescue, engineering, air raid warning and communications services; radiological, chemical and other special weapons defense; evacuation of persons from stricken areas; economic stabilization; allocation of critical materials in short supply; emergency transportation; existing or properly assigned functions of plant protection; other activities related to civilian protection and necessary to the preparation for carrying out these functions.

**Disaster** means the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural or man-made cause, including, but not limited to, fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, drought, critical material shortage, infestation, explosion, riot or hostile military or paramilitary action.

**Deputy director** means the deputy director of the emergency management agency appointed by the director.

**Director** means the director of the emergency management agency, appointed as prescribed by this chapter.

**Emergency management agency forces** means the employees, equipment and facilities of all Town departments, boards, institutions and commissions; and in addition, includes all volunteer personnel, equipment and facilities contributed by or obtained from, volunteer persons or agencies.

**Emergency management agency volunteer** means any person duly registered, identified and appointed by the director of the emergency management agency or their designee.

**Local** means restricted to the geographic boundaries of Kittery and the municipalities adjacent to it.

**Regulations** include plans, programs and other emergency procedures deemed essential to civil emergency preparedness.

#### **8.3.4 Organization and Appointments.**

The emergency management agency is hereby established within the executive department of the Town government and under the direction of the Town Manager. The Town Manager is hereby authorized to organize the emergency management agency utilizing to the fullest extent possible the existing agencies within the Town.

There is an executive head of the emergency management agency who is known as the director of the emergency management agency. The director is appointed by the Town Council and works under the direction of the Town Manager.

In addition to the director, the agency includes such other assistants, employees and EMA volunteers as are deemed necessary for the proper functioning of the organization. Any necessary employee is hired by the director with the consent of the Town Manager.

The emergency management agency operates according to this chapter and regulations which must be approved by the Town Council and which may be amended from time to time by the council. No regulation or amendment may be approved or adopted by the council during a declared emergency.

#### **8.3.5 Emergency Proclamation.**

Whenever a local disaster exists or appears imminent, the Town Manager, or the person duly appointed by the council to act in the absence of the Town Manager, by proclamation, is to declare that fact and that an emergency exists in the municipality. A copy of the proclamation is to be posted in the same manner as the warrant calling a Town meeting and a copy of the proclamation filed with the Town clerk. Local representatives of the media are to be contacted and informed about the proclamation as soon as possible.

#### **8.3.6 Emergency Powers and Duties.**

##### **8.3.6.1 Emergency Regulations.**

During any period when a local disaster has been proclaimed or when the governor has proclaimed a disaster pursuant to Title 37-B M.R.S. §742, the Town Manager may promulgate such regulations deemed necessary to protect life and property and preserve critical resources. Such regulations may include, but not be limited to, the following:

1. Regulations prohibiting or restricting the movement of vehicles in order to facilitate the work of emergency management agency forces or to facilitate the mass movement of persons from critical areas within or outside the Town.
2. Regulations pertaining to the movement of persons from areas deemed hazardous or vulnerable to disaster.
3. Such other regulations necessary to preserve public peace, health and safety.

**8.3.6.2 Emergency Purchases.**

In accordance with Town Code Section 3.4.9, the Town Manager may obtain vital supplies, equipment and other properties found lacking and needed for the protection of health, life and property of the people, and bind the Town for the fair value thereof.

**8.3.6.3 Emergency Services.**

The Town Manager may require emergency services of any Town officials or employees. If regular Town forces are determined inadequate, the director may require the services of such other personnel as are available, including citizen volunteers. All duly authorized persons rendering emergency services are entitled to the privileges and immunities provided by state law and ordinances for regular Town employees and other registered and identified emergency management agency and disaster workers.

**8.3.7 Termination of Emergency.**

Whenever satisfied that a local emergency or disaster no longer exists, the Town Manager shall terminate the emergency proclamation by another proclamation. That proclamation must be published in local newspapers and posted in the same manner as the warrant calling a Town meeting. Local representatives of the media must be informed of the termination of the emergency as soon as possible.

**8.3.8 Duties of the Director of the Emergency Management Agency.**

The director of the emergency management agency is responsible to the Town Manager regarding all phases of emergency management activity. Under the supervision of the manager, the director is responsible for the planning, coordination, and operation of the emergency management activity in the Town. Under supervision of the manager, the director maintains liaison with the county, state and federal authorities and the authorities of other nearby political subdivisions as to insure the most effective operation of the emergency management agency plan. Duties include, but are not limited to, the following:

- A. Coordinating the recruitment of volunteer personnel and agencies to augment the personnel and facilities of the Town for civil emergency preparedness purposes.
- B. Development of plans for the immediate use of all the facilities, equipment, manpower and other resources of the Town for the purpose of minimizing or preventing damage to persons and property; and protecting and restoring to usefulness, governmental services and public utilities necessary for the public health, safety, welfare.

C. Negotiating and concluding agreements with owners or persons in control of buildings or other property for emergency management purposes and designating suitable buildings as public shelters.

D. Through public informational programs, educating the civilian population as to actions necessary and required for the protection of persons and property in case of enemy attack, or disaster, as defined herein, either impending or present.

E. Conducting public practice alerts to insure the efficient operation of the emergency management agency forces and to familiarize residents with emergency management regulations, procedures and operations.

F. Coordinating the activity of all other public and private agencies engaged in any emergency management activity.

G. Assuming such authority and conducting such activity as the Town Manager may direct to promote and execute the emergency preparedness plan.

**8.3.9 Emergency Preparedness Plan.**

A comprehensive emergency operations plan is to be adopted and maintained by resolution of the council upon recommendation by the Town Manager.

**8.3.10 Violation of Regulations.**

It is unlawful for any person to violate any of the provisions of this chapter or of the regulations or plans issued pursuant to the authority contained herein, or to willfully obstruct, hinder or delay any member of the emergency management agency as herein defined in the enforcement of the provisions of this chapter or any regulation or plan issued thereunder.

**8.3.11 Penalty.**

Any person, firm or corporation violating any provision of this chapter, or any rule or regulation promulgated thereunder, upon conviction thereof, is to be punished by a fine of a minimum of one hundred dollars to a maximum of one thousand dollars per occurrence.